



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/173201

PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care (CC), a hearing was held on May 05, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], [REDACTED]
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. Petitioner was sent child care overpayment notice dated March 21, 2016 that informed her that she had been overissued child care benefits in the amount of \$7782.83 for the period of July 10, 2015 through February 29, 2016. This is claim # [REDACTED]
3. The reason for the overissuance alleged here is that Petitioner allegedly failed to accurately report household composition. More specifically, the reason for this alleged overpayment is that Petitioner and her boyfriend (herein SAS and he is the father of her children) were living together and, in July 2015, she reported that he had moved out of the home. The agency concluded that he still lived there for the following reasons:
 - that SAS owns the home (at the above address) that Petitioner resides in
 - that SAS uses the above address for work records
 - that SAS's current driver's license shows the above address
 - that SAS has a vehicle registered in his name at the above address
 - that the post office delivers mail to SAS at the above address
 - that credit reports show that the above is SAS's address.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code, § DCF 101.23*. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*. [The Manual has been updated but the references in this Decision are to the Manual in effect at the start of the overpayment alleged here.]

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Relevant policy relied upon by the agency as the basis for this alleged overpayment involved here includes the following provisions - an assistance group includes nonmarital coparents (*Manual, §1.2.9, definition of Assistance Group*) and that is based on family size and income (*Manual, §1.6.0, generally*).

That child care benefits were issued as noted by the agency or that the factors at Finding # 3 are correct is disputed here; rather, Petitioner maintains that she and SAS moved back to Wisconsin in March 2015 and lived together until he moved out in July 2015. She testified that the relationship did not work as SAS had an older son from a prior relationship who cannot be trusted around Petitioner's younger children. The older son has ADHD and behavioral issues. She also stated that SAS pays child support. Child support records were requested and submitted post hearing and confirmed Petitioner's testimony. S pays \$150.00 per week and has since December 29, 2015. He also paid a \$3199.71 lump sum in April 2016 which would be enough at \$150.00 per week to cover an arrearage for 21 weeks which would go back to the first half of August 2015.

I found Petitioner to be credible. Further, the child support records matched her testimony. None of the agency reasons for concluding that they live together and that Petitioner lied when she reported that he left the home in July 2015 are compelling enough to rebut Petitioner's testimony. I am concluding that SAS was not in the home during the period of this overpayment and it must be reversed.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that Petitioner was overpaid child care benefits as alleged.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to rescind the overpayment alleged here (claim # [REDACTED]). This must be done within 10 days of the date of this Order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on

those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 1, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud